



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

Compliance Review Unit
State Personnel Board
November 20, 2017

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Department of Public Health (CDPH) personnel practices in the areas of examinations, appointments, EEO, and PSC's from July 1, 2016 through January 31, 2017 and mandated training from March 1, 2015 through March 1, 2017. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period	Very Serious

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious
Mandated Training	Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors	Very Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The mission of the CDPH, a nationally-accredited public health department, is to optimize the health and well-being of the people in California, primarily through population-based programs, strategies, and initiatives.

The CDPH's goals are to work towards health equity and the reduction of health disparities; decrease preventable disease, disability, injury, and premature death; promote social and physical environments that support good health for all; prepare for, respond to, and recover from emerging public health threats and emergencies; improve the quality of the workforce and workplace; and promote and maintain an efficient and effective organization.

The CDPH works toward these goals through its programmatic and operational support activities, and in collaboration with local health departments and other organizations throughout the State. The CDPH is a large department with approximately 3,747 full-time positions. The Department is composed of six centers: (1) Chronic Disease Prevention and Health Promotion, (2) Infectious Diseases, (3) Family Health, (4) Environmental Health, (5) Health Care Quality, and (6) Health Statistics and Informatics.

In addition, the Department has: (1) Emergency Preparedness Office, (2) Office of Compliance, (3) Office of Public Affairs, (4) Office of Health Equity, (5) Office of Quality Performance and Accreditation, (6) Office of Legal Services, (7) Information

Technology Services Division, (8) Office of Legislative and Governmental Affairs, (9) Fusion Center, and (10) Administration Division.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CDPH examinations, appointments, EEO program, and PSC's from July 1, 2016 through January 31, 2017 and mandated training from March 1, 2015 through March 1, 2017. The primary objective of the review was to determine if CDPH personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of CDPH examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CDPH provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CDPH EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

CDPH PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether CDPH justifications for the contracts were legally sufficient. The review was limited to whether CDPH practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the CDPH mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory and sexual harassment prevention training within statutory timelines.

¹If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

On October 16, 2017, an exit conference was held with the CDPH to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDPH written response on November 13, 2017, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CDPH conducted 168 examinations. The CRU reviewed 26 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Assistant Deputy Director, Emergency Preparedness Office	Open	Statement of Qualifications (SOQ) ²	8/10/2016	6
CEA A, Deputy Director, Fusion Center	Open	SOQ	4/4/2016	4
CEA A, Infectious Diseases Lab Chief, Division of Communicable Disease Control	Open	SOQ	1/6/2017	4
CEA B, Deputy Director, Center of Chronic Disease Prevention and Health Promotion	Open	SOQ	11/10/2016	10
CEA B, Deputy Director, Center of Chronic Disease Prevention and Health Promotion	Open	SOQ	1/26/2017	8
CEA B, Deputy Director, Office of Quality Performance and Accreditation	Open	SOQ	12/5/2016	11
Communicable Disease Specialist I	Open	SOQ	10/15/2016	6
Genetic Disease Program Specialist I	Open	SOQ	11/21/16	1
Health Facilities Evaluator II (Supervisor)	Open	SOQ	9/7/16	11
Health Facilities Evaluator Manager I	Open	SOQ	11/9/16	4
Public Health Medical Administrator I	Open	SOQ	11/21/16	2
Public Health Microbiologist Specialist (Virology)	Open	SOQ	11/14/17	3

² In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Research Scientist Manager (Chemical Sciences)	Open	SOQ	12/12/16	1
Research Scientist Supervisor II (Microbiological Sciences)	Open	SOQ	9/12/16	1
Research Scientist IV (Social/Behavioral Sciences)	Open	SOQ	9/12/16	6
Assistant Industrial Hygienist	Open	Education and Experience (E&E) ³	10/17/16	3
Associate Health Physicist	Open	E&E	9/21/16	5
Cytotechnologist, Laboratory Field Services	Open	E&E	9/19/16	1
Public Health Nutrition Consultant III (Specialist)	Open	Training and Experience (T&E) ⁴	1/17/17	2
Public Health Nutrition Consultant I	Open	T&E	1/17/2017	1
Research Scientist II (Food and Drug Sciences)	Open	T&E	7/13/16	5
Research Scientist III (Microbiological Sciences)	Open	T&E	11/21/2016	7
Supervising Health Physicist	Open	T&E	9/12/2016	11

³ In an education and experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

⁴ The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Examiner I, Laboratory Field Services	Open	Written ⁵	12/19/16	5
Examiner I, Laboratory Field Services	Open	Written	9/1/16	8
Junior Health Physicist	Open	Written	12/12/2016	17

FINDING NO. 1 – Job Analyses Were Not Developed or Used for the Examination Process

Summary:

A job analysis is required for each civil service examination. The CDPH did not provide job analyses for the Research Scientist II (Food and Drug Sciences), Research Scientist III (Microbiological Sciences), Research Scientist IV (Social/Behavioral Sciences), Research Scientist Manager (Chemical Sciences), and Research Scientist Supervisor II (Microbiological Sciences) examinations. While the CDPH provided Exam Administration Summary reports showing the linkage of factors in the classification specification to the examination questions, they did not complete the required job analysis report. Unlike a formal job analysis report, the Exam Administration Summary did not contain crucial aspects of the job analysis as listed in the Merit Selection Manual, including a description of how the knowledge skills and abilities (KSA's) and tasks were obtained, evidence of how and when the KSA's and tasks were reviewed, evidence that a representative sample of SME's participated in the finalization meeting and survey process, and survey cutoff methodology.

The CPH was unable to provide complete job analyses for the following classifications:

⁵ A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

Classification	List Active Date	List Expiration Date	No. of Eligibles
Research Scientist II (Food and Drug Sciences)	5/30/2003	Continuous	12
Research Scientist III (Microbiological Sciences)	9/9/2003	Continuous	31
Research Scientist IV (Social/Behavioral Sciences)	1/1/2003	Continuous	5
Research Scientist Manager (Chemical Sciences)	2/19/2003	Continuous	4
Research Scientist Supervisor II (Microbiological Sciences)	4/5/2003	Continuous	7

Criteria: The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations, title 2, section 50, mandates the development and use of a job analysis for the examination process. A "[j]ob analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that JAs adhere to the legal and professional standards outlined in the JA section of the MSM, and that certain elements must be included in the JA studies. (*Ibid.*) Those requirements include the following: (1) that the JA be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks must be sufficiently detailed to derive the requisite KSAs, and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

Severity: Very Serious. The examinations may not have been job-related or legally defensible.

Cause: The Research Scientist classification series is part of the California Department of Human Resources (CalHR) classification consolidation project. In cooperation with the CalHR, the class series is proposed to be reduced from approximately 50 classifications to 9. CalHR originally proposed placing the Research

Scientist consolidation on the SPB calendar for August 2017, but has pushed those dates out. In anticipation of consolidation, the California Department of Public Health (CDPH) was waiting for SPB approval of the new class series specification prior to redoing the exams. The job analyses for the Research Scientist series were not revised or completed since the department was waiting to develop the exam for the new class series under classification consolidation.

Action: Although, the CDPH was waiting for the new Research Scientist (RS) class series specifications, it is not absolved of its responsibility to develop a job analysis that is current (within five years) and valid for each of the RS classification examinations they continue to administer.

To correct this deficiency, the CDPH must abolish the Research Scientist II (Food and Drug Sciences), Research Scientist III (Microbiological Sciences), Research Scientist IV (Social/Behavioral Sciences), Research Scientist Manager (Chemical Sciences), and Research Scientist Supervisor II (Microbiological Sciences) lists, which have not yet expired. Within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CDPH must submit to the CRU a written report of compliance verifying that the above-stated examination list has been abolished. Additionally, prior to administering any future examinations, the CDPH must create and develop each examination based upon a job analysis that meets the requirements of the MSM.

Furthermore, the CRU finds the appointments that were made from the Research Scientist II (Food and Drug Sciences), Research Scientist III (Microbiological Sciences), Research Scientist IV (Social/Behavioral Sciences), Research Scientist Manager (Chemical Sciences), and Research Scientist Supervisor II (Microbiological Sciences) examinations were made in good faith, were not the fault of the appointed employees, and do not merit being voided.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CDPH made 687 appointments. The CRU reviewed 65 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Accounting Administrator I (Supervisor)	List Appointment	Permanent	Fulltime	2
Associate Governmental Program Analyst	List Appointment	Permanent	Fulltime	3
CEA A, Assistant Deputy Director, Emergency Preparedness Office	List Appointment	CEA	Fulltime	1
CEA A, Deputy Director, Fusion Center	List Appointment	CEA	Fulltime	1
Chemist	List Appointment	Permanent	Fulltime	1
Chief, Branch Public Health Laboratory	List Appointment	Permanent	Fulltime	1
Chief, Laboratory Field Services Branch	List Appointment	Permanent	Fulltime	1
Custodian	List Appointment	Permanent	Fulltime	1
Examiner I	List Appointment	Permanent	Fulltime	1
Health Facilities Evaluator II (Supervisor)	List Appointment	Permanent	Fulltime	1
Health Facilities Evaluator Nurse	List Appointment	Permanent	Fulltime	2
Health Program Specialist II	List Appointment	Permanent	Fulltime	2
Information Officer I	List Appointment	Permanent	Fulltime	1

Junior Health Physicist	List Appointment	Permanent	Fulltime	1
Office Assistant (General)	List Appointment	Permanent	Fulltime	1
Office Technician (Typing)	List Appointment	Permanent	Fulltime	1
Office Technician (Typing)	List Appointment	Permanent	Fulltime	1
Program Technician	List Appointment	Permanent	Fulltime	1
Program Technician	List Appointment	Temporary	Fulltime	1
Research Analyst I (General)	List Appointment	Permanent	Fulltime	1
Research Scientist I (Epidemiology/Biostatistics)	List Appointment	Permanent	Fulltime	1
Research Scientist I (Social/Behavioral Sciences)	List Appointment	Permanent	Fulltime	1
Research Scientist II (Epidemiology/Biostatistics)	List Appointment	Permanent	Fulltime	1
Research Scientist Supervisor I (Epidemiology/Biostatistics)	List Appointment	Permanent	Fulltime	1
Special Investigator	List Appointment	Permanent	Fulltime	1
Staff Information Systems Analyst (Specialist)	List Appointment	Permanent	Fulltime	1
Staff Services Analyst (General)	List Appointment	Permanent	Fulltime	4
Staff Services Management Auditor	List Appointment	Permanent	Fulltime	1
Stationary Engineer	List Appointment	Permanent	Fulltime	1
Supervising Program Technician II	List Appointment	Permanent	Fulltime	1
Systems Software Specialist I (Technical)	List Appointment	Permanent	Fulltime	1
Systems Software Specialist II (Technical)	List Appointment	Permanent	Fulltime	1
Training Officer I	List Appointment	Permanent	Fulltime	1
Associate Construction Analyst	Mandatory Reinstatement	Permanent	Fulltime	1
Associate Health Program Advisor	Mandatory Reinstatement	Permanent	Fulltime	1

Associate Personnel Analyst	Mandatory Reinstatement	Permanent	Fulltime	1
Health Facilities Evaluator Nurse	Mandatory Reinstatement	Permanent	Fulltime	3
Personnel Technician II (Specialist)	Mandatory Reinstatement	Permanent	Fulltime	1
Senior Legal Analyst	Mandatory Reinstatement	Permanent	Fulltime	1
Senior Information Systems Analyst	Mandatory Reinstatement	Permanent	Fulltime	1
Warehouse Worker	Mandatory Reinstatement	Permanent	Intermittent	1
Associate Governmental Program Analyst	Permissive Reinstatement	Permanent	Fulltime	1
Associate Governmental Program Analyst	Permissive Reinstatement	Permanent	Part Time	1
Health Facilities Evaluator Nurse	Permissive Reinstatement	Permanent	Fulltime	1
Nurse Consultant III (Specialist)	Retired Annuitant	Temporary	Intermittent	1
Program Technician II	Retired Annuitant	Temporary	Intermittent	1
Pharmaceutical Program Consultant	TAU	Temporary	Fulltime	1
Skilled Trades Journeyperson (Casual Employment)	TAU	Temporary	Intermittent	1
Environmental Program Manager I (Supervisor)	Transfer	Permanent	Fulltime	1
Program Technician II	Transfer	Permanent	Fulltime	1
Public Health Nurse I	Transfer	Permanent	Fulltime	1
Research Scientist II (Chemical Sciences)	Transfer	Permanent	Fulltime	1
Staff Services Analyst (Gen)	Transfer	Permanent	Fulltime	2
Staff Services Manager I	Transfer	Permanent	Fulltime	1

For each of the 41 list appointments, the CDPH properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, and cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The CRU reviewed 10 mandatory reinstatement appointments. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the

appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*) The CDPH complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed two retired annuitant appointments. The individuals submitted their applications and were eligible to be hired as retired annuitants, not to exceed 960 hours in a fiscal year.

The CRU reviewed two TAU appointments. When there is no employment list from which a position may be filled, the appointing power, with the consent of the department, may fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The CDPH complied with the rules and laws governing TAU appointments.

The CRU reviewed seven appointments made via transfer and three appointment made via permissive reinstatement. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Reg., tit. 2, § 425.) The CDPH verified the eligibility of each candidate to his/her appointed class.

However, the CDPH did not provide probation reports for all appointments as described in finding 2.

FINDING NO. 2 – Probationary Evaluations Were Not Provided for all Appointments Reviewed

Summary: The CDPH did not provide six probationary reports of performance for five of the 65 appointments reviewed by the CRU, as reflected in the table below:

Classification	Appointment Type	Number of Appointments Missing Probation Reports	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	Permissive Reinstatement	1	1
Health Facilities Evaluator Nurse	Permissive Reinstatement	1	1
Research Scientist Supervisor I (Epidemiology/Biostatistics)	List Appointment	1	1
Staff Information Systems Analyst (Specialist)	List Appointment	1	2
Program Technician II	Transfer	1	1
Total		5	6

Criteria: The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as CalHR may require. (Gov. Code § 19172.) CalHR’s regulatory scheme provides that “a report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job.” (Code Reg., tit. 2, § 599.795.) Specifically, a written appraisal of performance shall be made to the department within 10 days after the end of each one-third portion of the probationary period. (Ibid.) The Board’s record retention rules require that appointing powers retain all probationary reports. (Code Reg., titl. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The CDPH provides probationary report training to managers and supervisors, performs an annual performance evaluation process for the department and has a tracking system for probationary report completion. Through training, consultation and tracking, the CDPH makes a good faith effort to ensure supervisors and managers are informed of the requirements for completing probationary evaluations, however some probationary evaluations were not completed by the respective supervisor/manager even with department tracking and follow up systems in place.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDPH submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.) Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of

members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CDPH EEO program that was in effect during the compliance review period.

FINDING NO. 3 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Summary: The CDPH provided evidence that 16 discrimination complaints related to a disability, medical condition, or denial of reasonable accommodation were filed during the compliance review period. Six of the 16 complaint investigations exceeded 90 days and the CDPH failed to provide written communication to the complainant regarding the status of the complaint.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

Severity: Very Serious. Employees were not informed of the reasons for delays in decisions for complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: CDPH employees were verbally notified of the complaint status by the Civil Rights Unit. The Civil Rights Unit has modified its process to include written notification when a decision exceeds the 90 day time limit. As of October 2017, CDPH is in compliance with California Code of Regulations, title 2, section 64.4, subdivision (a).

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDPH submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section

64.4, subdivision (a). Copies of any relevant documentation should be included with the plan.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC’s, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CDPH had seven PSC’s that were in effect and subject to the Department of General Services (DGS) approval. The CRU reviewed three of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
GDS Moving & Installation, Inc.	Service	12/30/2016-6/30/2018	\$200,000.00	Yes
Orion Health Inc.	IT Services	8/15/16-6/30/18	\$324,510.00	Yes
Syserco Inc.	IT Services	7/1/2016-6/30/2018	\$499,270.00	Yes

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC's reviewed was \$1,023,780.00. It was beyond the scope of the review to make conclusions as to whether CDPH justifications for the contract were legally sufficient. For all PSC's reviewed, the CDPH provided specific and detailed factual information in the written justifications as to how each of the three contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CDPH PSC's complied with civil service laws and board rules.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component,

the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CDPH's mandated training program that was in effect during the compliance review period. The CDPH's ethics training, supervisory training and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 5 – Ethics Training Was Not Provided for All Filers

Summary: The CDPH did not provide ethics training to 419 of 1304 existing filers. In addition, the CDPH did not provide ethics training to 175 of 739 new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: CDPH was relying on training coordinators in the centers/divisions/offices to track completion of Ethics Training. The CDPH Human Resources Branch has taken over tracking Ethics Training for the department to ensure all conflict of interest filers are completing Ethics Training as required.

Action: The CDPH must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CDPH must establish a plan to ensure compliance with ethics training mandates and submit to the SPB a corrective action plan.

FINDING NO. 6 – Supervisory Training Was Not Provided for All Supervisors

Summary: The CDPH did not provide basic supervisory training to 46 of 185 new supervisors within twelve months of appointment.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a Career Executive Assignment position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (e).)

Severity: Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

Cause: The CDPH, Office of Quality Performance and Accreditation (OQPA) has records that indicate the following:
Twenty-eight of the forty-six supervisors have completed the mandatory, 80-hour supervisory training. OQPA is working with training coordinators and invoicing records to validate the completion and will submit documentation with the Corrective Action Plan (CAP).

Nine of the forty-six supervisors have not completed training. CDPH will provide a training plan for each of the nine Supervisor with the CAP.

Nine of the forty-six supervisors have separated or retired from CDPH. The CDPH will provide the documentation with the CAP.

Action: The CDPH must take appropriate steps to ensure that new supervisors are provided supervisory training within the twelve months.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CDPH must establish a plan to ensure compliance with supervisory training mandates and submit to the SPB a corrective action plan.

FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The CDPH did not provide sexual harassment prevention training to 18 of 288 new supervisors within six months of their appointment. In addition, the CDPH did not provide sexual harassment prevention training to 19 of 488 existing supervisors every two years.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

Severity: Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: CDPH provides on-line training which is available to all employees. Prior to February 2017, designated training coordinators entered the completion date of the training based on receipt of certificates of completion from employees. As of February 2017, completion dates are automatically populated into CDPH's learning management system upon the completion of the training. This eliminates the manual data entry of training completion and will improve the accuracy of the data in the learning management system. Additionally, the Civil Rights Unit initiated a quarterly review of the learning management system to follow up on training delinquencies to ensure required training is completed in compliance with Government Code 12950.1 subdivision (a).

Action: The CDPH must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CDPH must establish a plan to ensure compliance with sexual harassment training mandates and submit to the SPB a corrective action plan.

DEPARTMENTAL RESPONSE

The CDPH's response is attached as Attachment 1.

SPB REPLY

Based upon the CDPH's written response, the CDPH will comply with the CRU recommendations and findings and provide the CRU with an action plan.

It is further recommended that the CDPH comply with the afore-state recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.



State of California—Health and Human Services Agency
California Department of Public Health



KAREN L. SMITH, MD, MPH
Director and State Public Health Officer

EDMUND G. BROWN JR.
Governor

October 31, 2017

Suzanne M. Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95819

Dear Ms. Ambrose,

The California Department of Public Health (CDPH) reviewed the draft Compliance Review Report prepared by the State Personnel Board's (SPB) Compliance Review Team. The draft report summarized findings in the areas of examinations, appointments, Equal Employment Opportunity, and Personal Services Contracts from July 1, 2016 through January 31, 2017 and mandated training from March 1, 2015 through March 1, 2017.

The CDPH regards the audit process with a high degree of respect and views these reports as beneficial to ensure compliance.

Attached (Attachment A) are the department responses to the findings. If you have any questions or would like to discuss further, please contact Faye Borton, Internal Audits Manager in the Office of Compliance, at (916) 552-8715 or email at Faye.Borton@cdph.ca.gov.

Sincerely,

Kristanna Rivera, Chief
Human Resources Branch

cc:

Brandon Nunes, Chief Deputy Director, Operations
Susan Fanelli, Assistant Director
Alan Lum, Deputy Director, Administration Division
Monica Vazquez, Chief, Office of Compliance



ATTACHMENT A

Finding NO. 1-- Job Analyses Were Not Developed or Used for the Examination Process

Response: The Research Scientist classification series is part of the California Department of Human Resources (CalHR) classification consolidation project. In cooperation with the CalHR, the class series is proposed to be reduced from approximately 50 classifications to 9. CalHR originally proposed placing the Research Scientist consolidation on the SPB calendar for August 2017, but has pushed those dates out. In anticipation of consolidation, the California Department of Public Health (CDPH) was waiting for SPB approval of the new class series specification prior to redoing the exams.

Finding NO. 2-- Probationary Evaluations Were Not Provided for all Appointments

Response: The CDPH provides probationary report training to managers and supervisors, performs an annual performance evaluation process for the department and has a tracking system for probationary report completion. Through training, consultation and tracking, the CDPH makes a good faith effort to ensure supervisors and managers are informed of the requirements for completing probationary evaluations.

Finding NO. 3-- Complaints Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period.

Response: CDPH employees were verbally notified of the complaint status by the Civil Rights Unit. The Civil Rights Unit has modified its process to include written notification when a decision exceeds the 90 day time limit. As of October 2017, CDPH is in compliance with California Code of Regulations, title 2, section 64.4, subdivision (a).

Finding No. 4-- Personal Services Contracts Complied with Procedural Requirements

Response: No adverse findings were reported by SPB during the Compliance Review; therefore CDPH has no additional information to provide.

Finding NO. 5-- Ethics Training Was Not Provided for All Filers

Response: CDPH was relying on training coordinators in the centers/divisions/offices to track completion of Ethics Training. The CDPH Human Resources Branch has taken over tracking Ethics Training for the department to ensure all conflict of interest filers are completing Ethics Training as required.

Finding NO. 6-- Supervisory Training Was Not Provided for All Supervisors

Response: The CDPH, Office of Quality Performance and Accreditation (OQPA) has records that indicate the following:

- Twenty-eight of the forty-six supervisors have completed the mandatory, 80-hour supervisory training. OQPA is working with training coordinators and invoicing records to validate the completion and will submit documentation with the Corrective Action Plan (CAP) .
- Nine of the forty-six supervisors have not completed training. CDPH will provide a training plan for each of the nine Supervisor with the CAP.
- Nine of the forty-six supervisors have separated or retired from CDPH. CDPH will provide the documentation with the CAP.

Finding NO. 7– Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Response: CDPH provides on-line training which is available to all employees. Prior to February 2017, designated training coordinators entered the completion date of the training based on receipt of certificates of completion from employees. As of February 2017, completion dates are automatically populated into CDPH's learning management system upon the completion of the training. This eliminates the manual data entry of training completion and will improve the accuracy of the data in the learning management system. Additionally, the Civil Rights Unit initiated a quarterly review of the learning management system to follow up on training delinquencies to ensure required training is completed in compliance with Government Code 12950.1 subdivision (a).